TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 368. 1088 10

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

T. R. EUBANK, DOING BUSINESS UNDER THE NAME OF T. R. EUBANK & COMPANY.

IN ERROR TO THE CIRCUIT COURT OF SIMPSON COUNTY, STATE OF KENTUCKY.

FILED JULY 26, 1899.

(17,476.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 362

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vs.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 12, 1900.

1 STATE OF KENTUCKY, }
County of Simpson. }

Pleas before the Hon. I. H. Goodnight, judge of the Simpson county circuit court of Ky., at a court held at the court-house, in the city of Franklin, Ky.

T. R. EUBANK, Doing Business under the Name of T. R. Eubank & Company, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant. } Record.

Be it remembered that heretofore, to wit, on the 9th day of June, 1899, the plaintiff herein filed in the clerk's office of the court aforesaid *their* petition herein, which is as follows, to wit:

Simpson Circuit Court.

T. R. EUBANK, Doing Business under the Name of T. R. Eubank & Company, Plaintiff,
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD Company, Def't. } Petition — Ordinary.

The plaintiff, T. R. Eubank, doing business under the firm name of T. R. Eubank & Co., states that the defendant, The Louis-
2 ville and Nashville Railroad Company, is now and was at the times hereinafter complained of a corporation, duly chartered under the laws of the Commonwealth of Kentucky as a common carrier of both freight and passengers, and among other powers has the privilege of suing and being sued in its corporate name; that the defendant owns and operates and owned and operated at the times hereinafter complained of a line of railway for the transportation of freight and passengers from Nashville, Tenn., running north through Franklin, Ky., and continuing on to Louisville, Ky., a distance of one hundred and eighty-five miles; that the distance from Franklin, Ky., to Louisville, Ky., over defendant's said line is one hundred and thirty-four miles, and is included in and a part of the distance from Nashville, Tenn., to Louisville, Ky.; that — the times hereinafter complained of the defendant's rate for transportation of tobacco shipped by the hogshead from Nashville, Tenn., to Louisville, Ky., over the said line from Nashville, Tenn., was (12) twelve cents per one hundred pounds, and at the times hereinafter complained of divers persons and the public generally shipped tobacco by the hogshead from Nashville, Tenn., to Louisville, Ky., over the defendant's said line at the rate of (12) twelve cents per one hundred pounds, and no greater charge or rate was made or exacted or collected by the defendant.

That between Feb'y 23, 1897, and May the 5, 1897, the plaintiff shipped to Grinter & Co., at Louisville, Ky., over defendant's said line from Franklin, Ky., (18) eighteen hogsheads of tobacco,
3 aggregating 31,310 pounds. An itemized statement is filed herewith and marked Exhibit "A."

Upon Feb'y 27, 1897, the plaintiff shipped to the People's warehouse, at Louisville, Ky., over defendant's said line, from Franklin, Ky., one hogshead of tobacco, weighing 1,950 pounds, an itemized statement of which is filed herewith, marked Exhibit "B."

That between Jun- 19, 1897, and July 15, 1897, the plaintiff shipped to Rice and Turner, Louisville, Ky., over defendant's said line, from Franklin, Ky., (17) seventeen hogsheads of tobacco, aggregating 30,280 pounds, an itemized statement of which is filed herewith and marked Exhibit "C"; that between Jan'y 25, 1898, and Aug. 1, 1898, the plaintiff also shipped to Rice & Turner, at Louisville, Ky., over the defendant's said line, from Franklin, Ky., (43) forty-three hogsheads of tobacco, aggregating 81,705 pounds, an itemized statement of which is filed herewith and marked Exhibit "D."

That all of said shipments of tobacco amount to 145,245 pounds.

That upon all of said tobacco shipped as aforesaid the defendant unlawfully, willfully, and knowingly charged and exacted freight at the r. e of (25c.) twenty— cents per one hundred pounds, which freight rate the plaintiff paid to the defendant and which freight rate of 25c. per 100 pounds the defendant unlawfully, willfully, and knowingly received, and which amounted in the aggregate
4 & 5 to $363.11, which plaintiff paid the defendant for transporting said tobacco, aggregating 145,245 pounds, from Franklin, Ky., to Louisville, Ky.

That during all the time the plaintiff was shipping said tobacco to Louisville, Ky., from Franklin, Ky., the defendant's rate for tobacco from Nashville, Tenn., to Louisville, Ky., shipped in the same manner and under similar circumstances and conditions as plaintiff's said tobacco, was (12c.) twelve cents per 100 pounds, as above stated in *their* petition.

That the defendant had no right to charge, exact, collect, or receive from the plaintiff a greater freight rate for the said tobacco which the plaintiff shipped, as aforesaid, from Franklin, Ky., to Louisville, Ky., than (12c.) twelve cents per (100) one hundred pounds.

That the defendant unlawfully, willfully, and knowingly charged, exacted, collected, and received as freight for the transportation of said tobacco from Franklin, Ky., to Louisville, Ky., as aforesaid (13 cents per 100), $188.81 more than *they* had the lawful right to charge, exact, collect or receive of this plaintiff, for the defendant during said time and at no time had been authorized by the railroad commission of this Commonwealth of Kentucky to charge less for the transportation of tobacco from Nashville, Tenn.,
6 to Louisville, Ky., nor had they authorized a greater charge for the transportation of tobacco from Franklin, Ky., to Louisville, Ky., than from Nashville, Tenn., to Louisville, Ky., than

defendant charged for the transportation of tobacco from Franklin, Ky., to Louisville, Ky.

The plaintiff further says that the defendant has failed and refused to refund to this plaintiff said sum of one hundred and eighty-eight & $\frac{80}{100}$ dollars or any part thereof.

Wherefore the plaintiff asks for a judgment against the defendant for the sum of one hundred and eighty-eight and $\frac{81}{100}$ dollars and the cost of this cause.

ROARK & FINN,
Att'ys for Pl'ff.

Exhibits A, B, C, & D were filed with the foregoing petition; which exhibits are as follows, to wit:

7 T. R. Eubank & Co. shipped to Rice & Turner, Louisville, Ky.

'98.				
Jan'y 28.	Hogshead	# 1		1,860
	"	" 2		2,100
	"	" 3		1,665
	"	" 4		1,810
	"	5		1,860
	"	6		1,770
	"	7		1,840
	"	8		1,720
	"	9		1,785
	"	10		1,860
	"	11		1,930
Feb'y 26.	"	12		1,800
	"	13		1,855
	"	14		2,425
	"	15		1,810
M'ch 15.	"	16		2,010
May 4.	"	17		2,150
		18		1,740
		19		2,150
		20		2,140
		21		1,900
		22		1,900
* May 14.		23		2,100
		24		1,680
		25		1,800
				47,680

8 T. R. Eubank & Co. to Rice & Turner, Louisville, Ky.

CONTR.

		Am't for'd		47,680
1898.				
* May 14.	Hogshead	No.	26	2,010
	"	"	27	2,010
* May 23.	"	"	28	1,800
	"	"	29	1,750
	"	"	30	1,710
* Jun- 7.	"	"	31	1,890
	"	"	32	1,735
July 2.	"	"	33	2,150
	"	"	34	1,910
* July 29.	"	"	35	1,860
	"	"	36	1,800
	"	"	37	1,875
	"	"	38	1,810
	"	"	39	1,810
	"	"	40	1,890
	"	"	41	2,100
	"	"	42	2,055
	"	"	43	1,860
				81,750

Exhibit "D."

9 C. T. Eubank & Co. to Rice & Turner, Lou., Ky.

1897.				
Jun- 21.	Hogshead	No.	19	1,710
			20	1,775
			21	1,740
			22	1,865
			23	1,825
			24	1,740
July 6.			25	1,900
			26	1,755
			27	1,855
			28	1,715
			29	1,730
			30	1,960
			31	1,855
			32	1,900
			33	1,540
			34	1,645
			35	1,770
				30,280

Exhibit "C."

To Rice & Turner.

10 C. T. Eubank & Co. to People's Warehouse, Louisville, Ky.

1897.			
Feb'y	27.	Hogshead No. 1	1,950

Exhibit "B."

11 C. T. Eubank & Co. shipped to Grinter & Co., Louisville, Ky.

1897				
Feb'y	24.	Hogshead	No. 1	1,635
		"	" 2	1,620
	26.	"	" 3	1,810
M'ch	13.	"	" 4	1,910
			5	1,925
			6	1,975
M'ch	23.	"	" 7	1,900
			8	2,000
			9	1,850
			10	1,800
Apr.	9.	"	" 11	1,725
			12	1,770
			13	1,700
Apr.	26.	"	" 14	1,410
			15	1,710
Apr.	23.		16	1,560
			17	1,710
May	4.		18	1,700
				31,310

Exhibit "A."

12 At the time of filing of said petition herein a summons was issued, which is as follows, to wit:

The Commonwealth of Kentucky to the sheriff of Simpson county, Greeting:

You are commanded to summons The Louisville and Nashville Railroad Company to answer, on the first day of the next June term of the Simpson circuit court, a petition filed against it in said court by T. R. Eubank, doing business under the name of T. R. Eubank & Company, and warn it that upon its failing to answer the petition will be taken for confessed, or it will be proceeded against for contempt; and you will make due return of this summons on the first day of the next June term of said court.

Witness E. S. Bradshaw, clerk of said court, this 9th. day of June, 1899.

E. S. BRADSHAW, *Clerk.*

Upon said summons was made the following return, to wit:

Executed by delivering to S. A. Murray, agent for the Louisville and Nashville Railroad Co., a true copy of the within summons this June 9th, 1899.

W. S. McCLANAHAN, *S. S. C.*
W. W. McCLANAHAN, *D. S.*

13 At a court held, as aforesaid, on the 23rd day of June, 1899, the following order was entered herein, to wit:

On this day came defendant, by its attorneys, and tendered special and general demurrers to the petition; which demurrers are ordered to be and are now filed.

Which demurrers filed herein *is* as follows, to wit:

Simpson Circuit Court.

T. R. EUBANK, Plaintiff, vs. LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Defendant.	Special and General Demurrers.

1. The defendant demurs specially to the petition herein because the court has not jurisdiction of the subject of the action, and in this behalf the defendant says that said action necessarily involves and depends upon the legality of the rate charged by it from Nashville, Tennessee, to Louisville, Kentucky, which is an interstate rate, and therefore, under section 9 of the act of Congress entitled "An act to regulate commerce," approved February 4th, 1887, only the Interstate Commerce Commission or a district or circuit court of the United States has jurisdiction of the subject of the action, so far as said rate from Nashville, Tennessee, to Louisville, Kentucky, may be concerned.

14 2. The defendant demurs to the petition herein because it fails to state facts sufficient to constitute a cause of action.

3. The defendant demurs to the petition herein because it seeks to make a law of the State of Kentucky applicable to a rate charged by the defendant from Nashville, Tennessee, to Louisville, Kentucky, whereas such law, if so construed, would become a regulation of interstate commerce, and would therefore be invalid, because in conflict with and repugnant to subsection 3 of section 8 of article I of the Constitution of the United States and said act of the Congress of the United States approved February 4, 1887, entitled "An act to regulate commerce."

Wherefore defendant prays, &c.

WALKER D. HINES,
C. W. MILLIKEN,
J. A. MITCHELL,
For Defendant.

At a court held, as aforesaid, on the 26th day of June, 1899, the following order was entered herein, to wit:

The court, being advised upon the defendant's special and general demurrers to the petition herein, orders and adjudges that said demurrers be, and they are hereby, overruled; to which decision the defendant excepts, and thereupon defendant tendered its answer, which is ordered to be and is now filed.

15 Which answer filed herein is as follows, to wit:

Simpson Circuit Court.

T. R. EUBANK, Doing Business under the Name of T. R. Eubank & Company, Plaintiff,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant. } Answer.

Paragraph 1.

The defendant admits that at the time stated in the petition its nominal rate for the transportation of tobac-o by the hogshead, shipped from Nashville, Tenn., to Louisville, Ky., was 12 cents per *per* hundred pounds, but denies that at the times complained of in the petition divers persons or the public general-y shipped tobac-o by the hogshead from Nashville, Tenn., to Louisville, Ky., over the defendant's said line, at the rate of 12 cents per hundred pounds, and in this behalf this defendant says that during all of said time only 12 hogsheads of tobacco were transported by it from Nashville, Tenn., to Louisville, Ky., and that said 12 hogsheads of tobacco were all transported in the month of February, 1897, and, while said rate of 12 cents per hundred pounds has remained nominally in effect ever since that time, as a matter of fact no tobacco has been shipped upon that or any other rate from Nashville, Tenn.,

16 to Louisville, Ky., and defendant says that the said 12 hogsheads of tobacco so transported by it from Nashville, Tenn., to Louisville, Ky., in February, 1897, weighed 20,910 pounds, and that the revenue derived by it therefrom at the said rate of 12 cents per hundred pounds was only $25.09.

Defendant denies that between February 23, 1897, and May 5, 1897, or between any other dates, plaintiff shipped to Grinter & Co., at Louisville, Kentucky, over the defendant's line from Franklin, Kentucky, 18 hogsheads of tobacco, aggregating 31,310 pounds, or any tobacco except 15 hogsheads, aggregating 26,515 pounds; but def't admits that during said period pl'ff shipped to the Growers' warehou- at Louisville, Ky., 3 hogsheads, aggregating 4,815 pounds. Defendant admits that on February 27, 1897, the plaintiff shipped to the People's warehouse at Louisville, Kentucky, over the defendant's said line from Franklin, Kentucky, one hogshead of tobacco weighing 1,950 pounds. Defendant denies that between June 19, 1897, and July 15, 1897, or between any other dates or any other time, the plaintiff shipped to Rice and Turner, at Louisville,

Kentucky, over defendant's said line from Franklin, Kentucky, 17 or any other number of hogsheads of tobacco, aggregating 30,280 pounds or any other weight, or that between January 25, 1898, and August 1, 1898, or between any other dates or at any other time, the plaintiff shipped to Rice & Turner, at Louisville, Ky., over the defendant's said line from Franklin, Ky., 43 hogsheads of tobacco or any other number of hogsheads of tobacco, aggregating
17 81,705 pounds or any other weight; but defendant admits that between June 19, 1897, and July 15, 1897, the plaintiff shipped to Rice and Givings, at Louisville, Ky., from Franklin, Ky., 17 hogsheads of tobacco, aggregating 30,280 pounds, and admits that between January 25th, 1898, and August 1, 1898, plaintiff shipped to Rice & Givings, at Louisville, Ky., from Franklin, Ky., 43 hogsheads of tobacco, aggregating 81,687 pounds.

Defendant admits that all of said shipments of tobacco amounted to 145,245 pounds.

Defendant denies that upon all or any of said tobacco shipped, as aforesaid, or as alleged in the petition, the defendant unlawfully or willfully charged or exacted freight at the rate of 25 cents per hundred pounds. Defendant admits that it lawfully and rightfully charged upon all of the above-mentioned tobacco freight at the rate of 25 cents per hundred pounds, but denies that said freight was paid to the defendant by the plaintiff, and denies that said rate of 25 cents per hundred pounds was unlawfully or willfully received by the defendant, and denies that said freight, at the rate of 25 cents per hundred pounds, amounted in the aggregate to $363.11, but admits that said freight amounted to $346.23; but denies that the same was paid by the plaintiff to the defendant, and denies that it was paid for transporting tobacco aggregating 145,245 pounds, but admits that it was paid for transporting tobacco aggregating 138,482 pounds.

18 Defendant denies that during all or any of the times plaintiff was shipping said tobacco to Louisville, Ky., from Franklin, Ky., defendant's rate for tobacco from Nashville, Tennessee, to Louisville, Ky., under similar circumstances and conditions as the plaintiff's said tobacco, was 12 cents per hundred pounds, and in this behalf the defendant says that the circumstances and conditions under which tobacco was shipped from Nashville, Tennessee, to Louisville, Ky., during all of said times *was* substantially and essentially dissimilar from the circumstances and conditions under which plaintiff shipped tobacco from Franklin, Ky., to Louisville, Ky.

Defendant denies that it had no right to charge, exact, collect, or receive from the plaintiff or anybody else a greater freight rate for the said tobacco shipped by plaintiff, as above stated or as alleged in the petition, from Franklin, Ky., to Louisville, Ky., than 12 cents per *per* hundred pounds, and denies that the defendant unlawfully, willfully, or knowingly charged, exacted, collected, or received as freight for the transportation of said tobacco from Franklin, Ky., to Louisville, Ky., as aforesaid, 13 cents per hundred pounds, or any amount per hundred pounds, or $188.81, or any other amount, more

than it had the lawful right to charge, exact, collect, or receive of plaintiff or any other person.

Defendant admits that during the times named in the petition and at no time had it been authorized by the railroad commission of the Commonwealth of Kentucky to charge less for the transportation of tobacco from Nashville, Tennessee, to Louisville, Ky., than it charged for the transportation of tobacco from Franklin, Ky., to Louisville, Ky., or a greater charge from Franklin to Louisville than from Nashville to Louisville, and in this behalf defendant says that the railroad commission of Kentucky was and is without jurisdiction in the premises to authorize or supervise the charging of any rate whatever from Nashville, Tennessee, to Louisville, Kentucky.

19

Paragraph 2.

Further answering, defendant says that its said rate of 12 cents per hundred pounds for the transportation of tobacco from Nashville, Tennessee, to Louisville, Ky., was made under and in conformity with the act of Congress of February 4, 1887, entitled "An act regulating commerce," and under the acts amendatory thereof; that in pursuance of section 6 of said act the said rate was duly printed, posted, and kept open to public inspection, and was duly filed with the Interstate Commerce Commission, and that by virtue of said act it would have been unlawful for the defendant to have charged either more or less than the said rate of 12 cents per hundred pounds from Nashville, Tennessee, to Louisville, Ky.

Defendant further says that if the plaintiff has any cause of complaint on account of said rate from Nashville of Louisville the courts of the United States and the Interstate Commerce Commission have jurisdiction of said complaint, which jurisdiction is exclusive of the State courts.

20

Defendant further says that the Kentucky laws upon the subject of long and short hauls—that is, section 218 of the constitution and section 820 of the Kentucky statutes—apply only to a railroad in the State of Kentucky, and have no application whatever in any respect to such portion of the railroad as may be without the State of Kentucky, and have therefore no application whatever to that portion of the defendant's railroad between Nashville, Tennessee, and the State line between Tennessee and Kentucky, and that the rates which the defendant may charge from Franklin, Ky., to Louisville, Ky., are not and cannot become unlawful under the long and short haul laws of Kentucky by reason of any rates that may be charged by the defendant upon traffic transported from Nashville, Tenn., to Louisville, Ky.

Defendant further says that the long and short haul laws of Kentucky can apply only when both the long and short hauls which may be involved are within Kentucky, and that the hauls from Nashville, Tenn., to Louisville, Ky., are not and cannot be within the jurisdiction of Kentucky.

Defendant further alleges that at the times named in the petition it charged no rate on tobacco to Louisville, Ky., from

21

any point in the State of Kentucky on the same line with Franklin and farther from Louisville than Franklin less than the rate of 25 cents per hundred pounds charged by it from Franklin to Louisville.

Defendant says that if the laws of Kentucky are so construed as to make the defendant's said rate of 25 cents per hundred pounds from Franklin, Ky., to Louisville, Ky., unlawful by reason of the less rate charged by it from Nashville, Tenn., to Louisville, Ky., the result would be to regulate commerce among the States by the long and short haul laws of Kentucky, and to compel the defendant to and it would raise its rate of 12 cents per hundred pounds from Nashville, Tenn., to Louisville, Ky., unless it could obtain the authority from the railroad commission of Kentucky to charge the less rate from Nashville, Tenn., to Louisville, Ky.; that thereby the said long and short haul laws of Kentucky would regulate commerce among the States and would be in conflict with and repugnant to the said act of Congress entitled "An act to regulate commerce," and in conflict with and repugnant to subsection 3 of section 8 of article 1 of the Constitution of the United States, and would therefore be void; and the defendant hereby sets up, pleads, and relies on the right and privilege secured to it by the said act
22 of Congress and by said provisions of the Constitution of the United States to have its interstate traffic and the commerce conducted among the States and between Kentucky & Tennessee regulated by the Constitution and laws of the United States and to be free from the regulation and interferance of the constitution and laws of the State of Kentucky.

Paragraph 3.

Without waiving, but especially relying upon, the defenses set up in paragraph 2, defendant says that if any cause of action ever accrued by reason of the shipments of tobacco which are admitted in paragraph 1 and the rates charged therefor, said cause of action with respect to the 15 hogsheads of tobacco shipped to Grinter & Co., and with respect to the one hogshead of *of* tobacco shipped to the People's warehouse, and with respect to the freight collected thereon, accrued more than two years before the institution of this action, and is therefore barred by the statutes of limitation, for much more than two years have elapsed since the shipments of said tobacco, or any part of it, and since the freight charges thereon were paid, and defendant therefore pleads and relies upon the two years' statute of limitation in such cases made and provided in bar of plaintiff's right to recover any sum whatever against the defendant on account of said shipments of tobacco.

23 Paragraph 4.

Without waiving, but expressly relying upon, the defenses set up in paragraphs 2 and 3, defendant says that its rate on tobacco from Franklin to Louisville during all the times stated in the petition was much less than the defendant's standard tariff rates for that

distance, and that such less rate resulted from and was necessitated by the fact of competition existing at Franklin, Ky. Said competition arose from the fact that tobacco could be and was hauled by wagon from Franklin, Ky., to Bowling Green, Ky., and then shipped to Louisville on boats plying the Green and Barren and Ohio rivers at extremely low rates of transportation, and on account of competition the defendant had to and did accept said rate of 25 cents per hundred pounds, whereas but for that competition the defendant would and could have charged a much higher rate, which higher rate would have been just and reasonable, and said rate of 25 cents per hundred pounds was just and reasonable. Defendant further says that Nashville is situated on the Cumberland river, which is and was at all of said times navigated by numerous boats plying between Nashville and various points on the Ohio river, including Louisville, which said boats at all times offered to and did transport tobacco from Nashville to many places, including Louisville, at extremely low rates of transportation; that by reason of this water competition
24 Nashville enjoyed extremely low rates for shipment of tobacco to Louisville and many other places, and if defendant, at any of the times mentioned, had charged more for the transportation of tobacco from Nashville, Tenn., to Louisville, Ky., than 12 cents per hundred pounds, it would not have secured the transportation of any of said tobacco from Nashville to Louisville, but the same would have been shipped from Nashville to Louisville, or some other tobacco market, at extremely low rates of transportation by water and at rates less than 12 cents per 100 pounds, and thereby defendant would have lost wholly the transportation of any tobacco from Nashville to Louisville, and in fact the defendant succeeded in obtaining, even at the low rate of 12 cents per hundred pounds, the transportation of only 12 hogsheads of tobacco during the time named in the petition, and that was in February, 1897.

Defendant says that said tobacco transported by it from Nashville to Louisville was transported under the circumstances and conditions hereinbefore set out, and that none of the same could have been transported at any higher rate than the rate of 12 cents per hundred pounds; that at none of the times mentioned in the petition was the transportation of tobacco from Franklin to Louisville under or affected by the circumstances or conditions heretofore set out as affecting the transportation of tobacco from Nashville to Louisville; that so far as similar competition existed at
25 Franklin it was recognized by the defendant, but that the competition at Nashville differed substantially from the competition at Franklin, in that it was far more effective and necessitated a much lower rate, and that in making the difference in the rates between Franklin and Nashville the defendant simply recognized the substantial difference in the circumstances and conditions of the transportation from and to the said two places.

Defendant further says that it was to its advantage to transport such tobacco as it could secure from Nashville to Louisville at the rate of 12 cents per hundred pounds rather than to lose such trans-

portation altogether, as it would have done if it had attempted to charge more than said rate of 12 cents per hundred pounds; that the fact that it did transport tobacco from Nashville to Louisville at 12 cents per hundred pounds did not increase the rate that it charged from Franklin to Louisville or make the rate from Franklin to Louisville any higher than it would otherwise have been. Defendant further says that if it had refused to transport tobacco from Nashville to Louisville for any less rate than the rate charged from Franklin to Louisville, shippers at Nashville could and would have still shipped their tobacco to Louisville, or to other tobacco markets, over routes which this defendant could not control and at rates not exceeding 12 cents per hundred pounds, and most of such shippers, if any, seem to have done so. Defendant further says that it
26 could and did engage in the transportation of tobacco from Nashville to Louisville at said rate of 12 cents per hundred pounds, as above stated, without in anywise injuring Franklin or any person or interest at Franklin.

Defendant further states that it was duly incorporated by an act of the General Assembly of the Commonwealth of Kentucky entitled An act to incorporate the Louisville & Nashville Railroad Company, which was approved and became a law on the 5th day of March, 1850; that by virtue of said incorporation and the charter thereby granted to this defendant it acquired a contract right from the Commonwealth of Kentucky to operate a railroad and to engage in all manner of legitimate railroad business; that its engaging in the tobacco business between said Nashville & Louisville, as above stated, at the rate which it was compelled to charge for that business, was a legitimate railroad business and not injurious to any person; and if the law of Kentucky is so construed as to require it either to withdraw from that business or to reduce all other rates on tobacco to Louisville from points between Nashville & Louisville to the same low basis, regardless of any inquiry into their reasonableness, and when, in fact, they are reasonable, saving only an arbitrary and final power in the Railroad Commission of Kentucky, not subject to judicial review, to relieve from the operation of such requirement, such law would be an arbitrary requirement and an arbitrary interference with its legitimate railroad business,
27 not promoting or tending to promote or in anywise related to or connected with the general welfare of the State or the welfare of any person in the State, and would, therefore, impair the obligation of the aforesaid contract between the defendant and the Commonwealth of Kentucky, contrary to subsection 1 of section 10 of article 1 of the Constitution of the United States.

Defendant further states that if the law of Kentucky should be so construed as to deprive it of the right to use its property in the business of transporting tobacco from Nashville to Louisville under the circumstances above stated, or to require it to reduce its other rates to the same low competitive basis as above stated, saving only an arbitrary and final power in the Railroad Commission of Kentucky, not subject to judicial review, to relieve from the operation of such requirement, it would be an arbitrary requirement, not

promoting or tending to promote or in anywise related to or connected with the general welfare of the State or the welfare of any person in the State, and would, therefore, in effect, deprive the defendant of the right to use its property and of its property itself without due process of law, and would deny the defendant the equal protection of the law, contrary to section 1 of article 14 of the amendments to the Constitution of the United States.

Defendant further says it has many lines in and out of
28 Kentucky on which are tobacco shipping stations about the same distance from Louisville as Franklin, Ky., which other stations are not on the line between Nashville and Louisville, which are entitled to and enjoy substantially the same rates as Franklin, and that if said law were so construed as to require a reduction in the tobacco rates between Nashville and Louisville, so as not to exceed the rate from Nashville to Louisville, it would still require no reduction in other rates for similar distances to Louisville, Ky., not happening to be on the same line as Nashville, and the result would be that places on the same line with Nashville and nearer to Louisville would be given an arbitrary and unreasonable advantage over other places at the same distance from Louisville not on that line; that such result would work an undue and unreasonable prefference in favor of places on the line between Nashville and Louisville and against all other places not on that line, and that the law bringing about such a result would be an unreasonable exercise of power on the part of the State and would impair the obligation of the aforesaid contract between the defendant and the Commonwealth of Kentucky, contrary to subsection 1 of section 10 of article 1 of the Constitution of the United States, and would deprive the defendant of the right to use its property and its property itself without due process of law, and would deny to the defendant the equal protection of the law, contrary to section 1 of article 14 of the
29 amendments to the Constitution of the United States.

Defendant *d*urther says that the law of Kentucky so construed would necessarily involve an unlawful interference with commerce between the States, in conflict with subsection 3 of section 8 of article 1 of the Constitution of the United States, and in conflict with the act of Congress of February 4, 1887, entitled "An act to regulate commerce," because the law of Kentucky so construed would be directly contrary in effect to the same provision which has been adopted by Congress in said act for the government of long and short haul interstate traffic, and would necessarily disturb the commercial relations which do and ought to exist between points in Kentucky and adjoining States, and would seriously interfere with the due and proper regulations of commerce between the States.

Defendant therefore says that the laws of Kentucky construed so as to prohibit the legitimate adjustment of rates herein described would be in conflict with and repugnant to the above-mentioned provisions of the Constitution of the United States and said act of Congress entitled "An act to *to* regulate commerce," and defendant hereby specially sets up, pleads, and relies upon the rights, immu-

nities, and privileges guaranteed to it by the said provisions of the Constitution of the United States and by the said act of Congress.

Wherefore the defendant prays the court to dismiss the
30 petition and prays judgment for costs and for all proper relief.

WALKER D. HINES.
C. W. MILLIKEN.
J. A. MITCHELL.

At a court held, as aforesaid, on the 26th day of June, 1899, the following order was entered herein, to wit:

Came pl'ff, by att'y, and filed demurrer to paragraph- 2, 3, and 4 of the defendant's answer herein.

Which demurrer is as follows, to wit:

Simpson Circuit Court.

T. R. EUBANK, &c., Pl'ff, } Demurrer.
vs.
L. & N. R. R. Co., Def't. }

Comes the plaintiff and demurs to paragraphs 2, 3, and 4 of the defendant's answer herein, because the facts stated in said paragraph and each of said paragraphs are insufficient in law to constitute any defense to plaintiff's petition and the allegations therein contained. Wherefore pl'ff prays that said paragraphs of said answer be adjudged as insufficient.

ROARK & FINN.

31 At a court held, as *as* aforesaid, *of* the 26th day of June, 1899, the following order was entered herein, to wit:

The court, being advised upon the plaintiff's demurrer to the 2nd, 3rd, and 4th paragraphs of the defendant's answer, orders and adjudges that said demurrer be sustained; to which decision the defendant excepts.

At a court held, as aforesaid, on the 26th day of June, 1899, the following order was entered herein, to wit:

Came the plaintiff in open court and *and* filed reply to the def't's answer; to which reply the defendant refused and failed to rejoin.

Which reply filed herein is as follows, to wit:

Simpson Circuit Court.

T. R. EUBANK, &c., Pl'ff, } Reply.
vs.
L. & N. R. R. Co., Def't. }

The plaintiff, for reply to the answer of the defendant filed herein, admits that the shipment of tobacco between June 18, 1897, and July 15, 1897, was to Rice & Givings instead of Rice and
32 Turner, but the plaintiff denies that the 43 hogsheads of tobacco shipped between Jan'y 25, '98, and Aug. 1, 1898, was

shipped to Rice & Givings or any person or firm other than Rice and Turner. The plaintiff states that all the freight upon the tobacco shipped, as set forth in the pl'ff's petition, was paid for plaintiff by the parties to whom the tobacco was consigned and deducted by said consignees from the proceeds of the sale of said tobacco.

The plaintiff denies that the circumstances and conditions under which the tobacco was shipped from Nashville, Tenn., to Louisville, Ky., *was* essentially dissimilar or dissimilar at all to the conditions and circumstances under which said tobacco was shipped from Franklin, Ky., to Louisville, Ky.

Wherefore the plaintiff prays as in the original petition.

ROARK & FINN, *Att'ys.*

At a court held, as aforesaid, on the 26th day of June, 1896, the following judgment was entered herein, to wit:

33 Simpson Circuit Court.

T. R. EUBANK & Co., Pl'ff,
vs.
L. & N. R. R. Co., Def't. } Judgment.

In the above cause the plaintiff moves the court for judgment for the plaintiff upon the pleadings and exhibits filed; to which motion the defendant, by attorney, objects, and the court, being sufficiently advised, is of opinion and so adjudges that the plaintiff's motion should be sustained, and it is therefore ordered and adjudged by the court that the plaintiff recover of the defendant, The Louisville & Nashville Railroad Company, the sum of one hundred and eighty-eight and $\frac{81}{100}$ dollars and his costs herein expended, for which execution may issue; to all of which the defendant excepts and objects.

34 On first day of July, 1899, the defendant and plaintiff in error filed in the office of the clerk of the Simpson circuit court its writ of error (a copy of which remains on file in said clerk's office) as follows:

35 *Writ of Error.*

UNITED STATES OF AMERICA:

The President of the United States to the Simpson circuit court of Kentucky and to the judge thereof, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Simpson circuit court, before the judge thereof, being the highest court of law or equity of the said State in which a decision could be had in the said suit between T. R. Eubank, doing business under the name of T. R. Eubank & Company, plaintiff, and The Louisville & Nashville Railroad Company, defendant, wherein was drawn in question the validity of a

statute of the United States and the decision was against its validity, or wherein was drawn in question the validity of a statute or constitution of or an authority exercised under said State of Kentucky, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a statute of the United States and the decision was against the right, title, privilege, or exemption specially set up or claimed under such clause of the said Constitution or statute, a manifest error hath happened, to the great damage of the said Louisville & Nashville Railroad Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, in said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 1st day of July, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States of America the one hundred and twenty-third.

Seal 6th Circuit Court, Ky. Dis., U. S. of America.

THOS. SPEED,
Clerk of the Circuit Court of the United States for the District of Kentucky.

Allowed by—
I. H. GOODNIGHT,
Judge of the Simpson Circuit Court of Kentucky.

[Endorsed:] Louisville & Nashville Railroad Company, plaintiff in error, *vs.* T. R. Eubank, doing business, &c., def't in error. Writ of error. Filed in office July 1st, 1899. E. S. Bradshaw, C. S. C. C.

36 On the same day, to wit, July 1, 1899, the plaintiff in error filed in said clerk's office its bond as follows:

37

Bond.

Simpson Circuit Court.

T. R. EUBANK, Doing Business under the Name of T. R. Eubank & Company, Plaintiff,
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Defendant.

Know all men by these present that the Louisville & Nashville Railroad Company, principal, and Walker D. Hines, surety, are held and firmly bound unto the above-named T. R. Eubank in the sum of $500.00, to be paid to the obligee herein; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 1st day of July, 1899.

Whereas the above-named Louisville & Nashville Railroad Company has prosecuted a writ of error from the Supreme Court of the United States to reverse the judgment rendered in the above cause by the Simpson circuit court of Kentucky:

Now, therefore, the condition of this obligation is such that if the above-named Louisville & Nashville railroad shall prosecute its said writ of error to effect and, *and* if it shall fail to make good,
38 its plea, answer the whole amount of the judgment therein, including the just damage for delay and all costs and interest, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
By WALKER D. HINES, *Attorney.* [L. S.]
WALKER D. HINES. [L. S.]

Sealed and delivered in the presence of and approved by—
I. H. GOODNIGHT,
Judge of the Simpson Circuit Court of Kentucky.

On the same day, to wit, July 1, 1899, the plaintiff in error filed its assignment of errors in said clerk's office as follows:

39 Supreme Court of the United States.

LOUISVILLE & NASHVILLE RAILROAD Company, Plaintiff in Error,
v.
T. R. EUBANK, Doing Business under the Name of T. R. Eubank & Company, Defendant in Error.

Assignment of Errors and Prayer for Reversal.

The Louisville and Nashville Railroad Company, plaintiff in error in the above-entitled cause, complains of the judgment rendered therein by the Simpson circuit court of Kentucky, and for error therein assigns the following:

First. The court erred in overruling the *the* defendant's special demurrer to the petition herein, and thereby said court decided against the validity of the statute of the United States therein set up and against the right therein set up and claimed under said statute.

Second. The court erred in overruling the defendant's general demurrer to the petition herein, based on the ground that said petition sought to make a law of the State of Kentucky, to wit, section 218 of the constitution of Kentucky and section 820 of the Kentucky statutes, applicable to a rate charged by the defendant from Nashville, Tennessee, to Louisville, Kentucky, whereas said law, if so construed, would become a regulation of interstate commerce and would therefore be invalid, because in conflict with and repug-

40 nant to subsection 3 of section 8 of article 1 of the Constitution of the United States and the act of the Congress of the United States approved February 4, 1887, entitled "An act to regulate commerce," and the amendments thereto, and thereby decided in favor of the validity of said section 218 of the constitution of Kentucky and section 820 of the Kentucky statutes, construed as aforesaid, notwithstanding their repugnancy *of* the Constitution and laws of the United States.

Third. The court erred in sustaining the plaintiff's demurrer to paragraph two of the defendant's answer herein, and thereby the court decided against the validity of said act to regulate commerce and its amendments and in favor of the validity of said section 218 of the constitution of Kentucky and section 820 of the Kentucky statutes, notwithstanding that, as construed by the court, they were and are and each of them was and is repugnant to and in conflict with subsection 3 of section 8 of article 1 of the Constitution of the United States and the act of Congress approved February 4, 1887, entitled "An act to regulate commerce," and the acts amendatory thereof; and the court thereby also decided against the right, title, privilege, and exemption specially set up and claimed by the defendant under said clause of the Constitution of the United States and under said statutes of the United States.

Fourth. The court erred in sustaining the plaintiff's de-

41 murrer to the fourth paragraph of the defendant's answer herein, and thereby the court held section 218 of the consti-

tution of Kentucky and section 820 of the Kentucky statutes to be valid, notwithstanding their repugnancy and the repugnancy of each of them to the provisions of the Constitution and statutes of the United States set up in the fourth paragraph of the defendant's answer for the reason set forth in said fourth paragraph of said answer; and thereby the court decided against the right, title, privilege, and exemption specially set up and claimed by the defendant in the fourth paragraph of said answer under the provisions of the Constitution and statutes of the United States set up in said fourth paragraph.

Fifth. The court erred in rendering judgment herein against the defendant, and thereby the court decided against the validity of said act of Congress entitled "An act to regulate commerce" and the amendments thereto and in favor of the validity of section 218 of the constitution of Kentucky and section 820 of the Kentucky statutes, although so construing said sections as to make them repugnant to and in conflict with the various provisions of the Constitution and statutes of the United States which had been set up in defendant's special and general demurrers to the petition and in the fourth paragraph of the defendant's answer, and thereby the court also decided against the right, privilege, and exemption which
42 had been set up, pleaded, and relied upon by the defendant in its said special and general demurrers and in the second and fourth paragraphs of its said answer under the provisions of the Constitution and statutes of the United States as set fourth in said special and general demurrers and in said second and fourth paragraphs of defendant's answer.

Sixth. The court erred in rendering the judgment sought to be reversed because it is contrary to the law of the controversy and in opposition to the rights of the said plaintiff in error secured to it by the Constitution and laws of the United States.

Wherefore it prays for a reversal of said judgment.

H. W. BRUCE,
WALKER D. HINES,
Attorneys for Plaintiff in Error.

43 COMMONWEALTH OF KENTUCKY, } *set:*
Simpson Circuit Court, }

I, E. S. Bradshaw, clerk of the Simpson circuit court of Kentucky, hereby certify that the preceding 42 pages contain a true & complete transcript of the record and proceedings had in said court in the action of T. R. Eubank, doing business under the name of T. R. Eubank & Co., plaintiff, *vs.* Louisville & Nashville Railroad Company, defendant, together with the original writ of error (a copy of which is on file in my office), a copy of the bond and assignment of errors, all of which appear of record and on file in my office.

In testimony whereof I have hereto set my hand and affixed the seal of my office.

Seal Simpson Circuit Court, Kentucky.

Done at Franklin, Simpson county, Kentucky, this July 20th, 1899.

E. S. BRADSHAW,
Clerk Simpson Circuit Court of Kentucky.

Clerk's fee, $11.00.

44 UNITED STATES OF AMERICA:

The President of the United States to T. R. Eubank, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Simpson circuit court, wherein The Louisville & Nashville Railroad Company is plaintiff in error and T. R. Eubank, doing business under the name of T. R. Eubank & Company, is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable I. H. Goodnight, judge of the Simpson circuit court of Kentucky, this 1st day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

I. H. GOODNIGHT,
Judge of the Simpson Circuit Court of Kentucky.

Service of this citation is hereby accepted July 1st, 1899.

T. R. EUBANK,
By ROARK & FINN,
G. W. ROARK,
G. T. FINN.
Attorneys for T. R. Eubank.

Endorsed on cover: File No., 17,476. Kentucky, Simpson circuit court. Term No., 362. The Louisville and Nashville Railroad Company, plaintiff in error, *vs.* T. R. Eubank, doing business under the name of T. R. Eubank & Company. Filed July 26th, 1899.